

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of the Connecticut Department)	CC Docket No. 99-200
of Public Utility Control for Authority)	NSD File No. L-02-03
to Conduct a Transitional Service)	
Technology Specific Overlay Trial in)	
Connecticut)	

**COMMENTS OF AT&T WIRELESS SERVICES, INC. ON PETITION OF
CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL FOR
AUTHORITY TO CONDUCT A TRANSITIONAL SERVICE TECHNOLOGY
SPECIFIC SERVICE OVERLAY TRIAL**

AT&T Wireless Services, Inc. (“AWS”) respectfully submits comments on the Petition of the Connecticut Department of Public Utility Control (“CTDPUC”) for authority to conduct a service overlay trial (“Petition”).¹ As discussed below, AWS has serious concerns that the CTDPUC has failed to comply in essential respects with the Commission’s requirements regarding petitions for delegated authority to implement service overlays (“SOs”) by providing little analysis or discussion of the factors required for a SO. At the same time, AWS acknowledges that the general framework that the CTDPUC proposes is reasonable and that the CTDPUC has engaged in good faith efforts to address the numbering exhaust problem in the state. Accordingly, AWS supports the Commission’s grant of the Petition, provided, however, that in areas where the showing is inadequate (or the proposal unclear), the Commission impose changes that make the SO consistent with the Commission’s guidelines.

¹ See Public Notice, DA 02-274, *Common Carrier Bureau seeks comment on the Petition of the Connecticut Department of Public Utility Control for delegated authority to implement transitional service-specific and technology-specific overlays* (Feb. 6, 2002) (comments due on February 26, 2002).

I. INTRODUCTION AND SUMMARY

Historically, the Federal Communications Commission (“Commission”) has rejected wireless-only overlays or technology-specific overlays as “unreasonably discriminatory,” and as “unduly inhibit[ing] competition.”² However, given the “increased urgency of the numbering crisis,” in its *Third NRO Order*, the Commission decided to lift its ban on SOs. In making its decision, the Commission found that there were a number of benefits to SOs, including most significantly, that “SOs can make available additional resources to certain service providers that would otherwise be subject to rationing or other limitations on access to numbering resources because they [are non-pooling capable].”³ The Commission decided that it would consider SO proposals on a case-by-case basis, and invited states to petition for delegated authority to implement SOs. As an initial matter, the Commission required the states to “discuss why the numbering resource optimization benefits of the proposed SO would be superior to implementation of an all-services overlay.”⁴ States were also required to demonstrate: (1) the technologies or services to be included in the SO; (2) the geographic area to be covered; (3) whether the SO will be transitional; (4) when the SO will be implemented and, if a transitional SO is proposed, when the SO will become an all-services overlay; (5) whether the SO will include take-backs; (6) whether there will be 10-digit dialing in the SO and the underlying area

² *Numbering Resource Optimization, Implementation of Local Competition Provisions of the Telecommunications Act of 1996, Telephone Portability*, FCC 01-362, Third Report and Order and Second Order on Reconsideration in CC Docket No.96-98 and CC Docket No.99-200 (rel. Dec. 28, 2001) (“*Third NRO Order*”) at para. 68.

³ *Id.* at para. 77. This is consistent with a proposal by the Joint Wireless Communicators (JWC) to provide transitional overlap as a means to provide numbering resources for non-pooling capable carriers where an area code is in jeopardy. The JWC proposed that the SO would be converted to an all-services overlay when non-pooling carriers become pooling-capable. *Id.* at para. 70.

⁴ *Third NRO Order* at para. 81.

code(s); (7) whether the SO and underlying area code(s) will be subject to rationing; and (8) whether the SO will cover an area in which pooling is taking place.⁵

The CTDPUc initially filed its Petition with the Commission to implement SOs on March 7, 2001.⁶ In response to the *Third NRO Order*, on January 9, 2002, the CTDPUc filed supplemental information to its March 2001 Petition, on which the Commission now seeks comment. Although the CTDPUc has addressed all of the eight factors listed by the Commission in the *Third NRO Order*, it has done so in a somewhat cursory manner and provides little significant discussion or analysis of its proposed SO. Moreover, the Petition fails to undertake the mandated cost-benefit analysis.⁷ The Petition is also vague and unclear on some of the parameters it will use in implementing the SO, including how it would define “non-geographic numbers,” and whether it will require 10 digit dialing, making it difficult for AWS to comment meaningfully.

Based on the lack of detailed discussion in the Petition of the factors on which the Commission has requested analysis, it would be appropriate for the Commission to deny the Petition. However, despite these procedural defects, in other respects the basic SO framework proposed by the CTDPUc is reasonable and sound. Of critical importance to AT&T Wireless, the CTDPUc rejects the take-back of numbers from pooling carriers.⁸ The SO also includes properly non-pooling carriers (a category originally proposed by the wireless carriers), purports to be transitional, and does not propose rationing. Further, AWS recognizes that the CTDPUc has been diligently pursuing area code relief plans in the state, and commends the CTDPUc for

⁵ *Third NRO Order* at para. 81.

⁶ Petition of the Connecticut Department of Public Utility Control for Authority to Conduct a Transitional Service Technology Specific Service Overlay, CC Docket No. 99-200, NSD File No. L-02-03 (March 7, 2001).

⁷ See *Third NRO Order* at para. 81

implementing pooling trials and attempting to address its numbering exhaust issues proactively. Accordingly, AWS could support the Commission's grant of the Petition, provided that the following changes and clarifications are made to make the SO consistent with the Commission's guidelines.

- non-pooling capable carriers can take numbers from the underlying codes once they become pooling capable;
- 10 digit dialing is implemented in all NPAs when the SO is implemented;
- one area code (rather than two) is used to overlay both the 203 and 860 NPAs; and
- no authority is delegated to the CTDPUc to take back non-geographic numbers.

II. THE SERVICE OVERLAY SHOULD BE TRANSITIONAL AND THE TRIGGER MECHANISM CONSISTENT WITH THE COMMISSION'S GUIDELINES

The CTDPUc's proposed SO would include a combination of technology-specific uses (non-pooling capable carriers) and service-specific (non-geographic) uses and would transition to an all services overlay when the underlying area codes exhaust.⁹ The CTDPUc proposal's exhaust trigger date is not completely consistent with the Commission's guidelines. Although the Commission did not completely disallow use of an exhaust trigger date, where a state proposes an SO that segregates non-pooling carriers in the SO area code, the state must "bear the burden of demonstrating why the transition should not occur when wireless pooling commences" and must "explain how the proposed transition mechanisms meet [the Commission's] numbering resource optimization goals and equitably balances the interests of affected carriers and consumers."¹⁰ The CTDPUc has failed to meet its burden. Moreover, the CTDPUc has admitted that its transition proposal could result in a permanent SO, in clear violation of the

⁸ Petition at 7.

⁹ Petition at 7.

Commission's guidelines.¹¹ For these reasons and to promote the public interest benefits described below, AWS proposes that the CTDPUC should allow carriers that become pooling-capable to take numbers from the underlying area code prior to transition to an all-services overlay. Provided that the Commission makes this modification, the SO could transition to an all-services overlay when the underlying code reaches exhaust.

Allowing carriers to take numbers from the underlying area code as they become pooling capable ensures that the segregation is not permanent, and further provides incentives to carriers to become pooling-capable so that they may use these underlying numbers. In addition, this proposal promotes number resource optimization, because as the Commission has noted, the "benefits of number pooling are enhanced when a larger number of carriers are able to participate in pooling within an NPA."¹² It is also fundamentally more equitable for pooling-capable providers to take from the underlying code once they become pooling-capable; at that point, there is no substantive or technical reason why wireless customers should be denied the availability of numbers in the underlying code. Further, AWS believes that allowing pooling-capable carriers to obtain numbers from the underlying code in the interim is consistent with the Commission's guidelines that if the segregation criteria is pooling capability, the transition occur when pooling-capability is attained.¹³ Finally, because the pooling date would not trigger the

¹⁰ *Third NRO Order* at para. 87.

¹¹ See Petition at 7 (if underlying area codes are reserved solely for wireline services, the lives of underlying numbering plan areas ("NPAs") could be "extended indefinitely"); *Third NRO Order* at para. 74, 84 (in which the Commission clearly favors *transitional* SOs, and has been rightly concerned about the anti-competitive aspects of permanent technology-specific overlays).

¹² *Third NRO Order* at para. 87

¹³ *Third NRO Order* at para. 87.

complete transition to an all-services overlay, AWS' proposal would not, as the Commission worried, provide area code relief for the underlying area code prematurely.¹⁴

III. 10 DIGIT DIALING SHOULD BE IMPLEMENTED IN ALL NPAS WHEN THE SERVICE OVERLAY IS IMPLEMENTED

The Commission's rules require 10-digit dialing in the overlay area code as well as the underlying area code when overlays are the selected form of area code relief.¹⁵ The Commission has consistently denied any requests for permanent waivers of 10 digit dialing, and the Second Circuit has affirmed the Commission's 10 digit policy and dialing rules.¹⁶ In the case of SOs, the Commission has continued its policy in favor of 10 digit dialing, noting that it would maximize numbering resource optimization and minimize anti-competitive impacts.¹⁷

In this case, it is unclear how the CTDPUc wants to handle dialing within the SO. Although the CTDPUc indicates that it does not believe that 10 digit dialing would be necessary with the implementation of SOs at this time, it does not actually request a waiver of the 10 digit dialing rules.¹⁸ In fact, the CTDPUc states that given the extent of 10 digit dialing in

¹⁴ See *Third NRO Order* at para. 86.

¹⁵ See 47 CFR 52.19(c)(3)(ii) (no area code overlay may be implemented unless there exists, at the time of implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the overlay area code).

¹⁶ The Second Circuit recently affirmed the FCC's denial of permanent waiver to the New York commission. See *People of State of New York, Public Service Commission of the State of New York v. FCC*, 267 F.3d 91 (2nd Cir. 2001) ("*New York v. FCC*").

¹⁷ See, e.g. Illinois Commerce Commission Petition for Expedited Temporary Waiver of 47 CFR Section 52.19(c)(3)(ii), DA00-477, NSD File No. L-99-65, Order (2000) ("ICC Order") (granting temporary waiver); Pennsylvania Public Utility Commission Petition for Expedited Waiver of 47 C.F.R. Section 52.19 for Area Code 412 Relief, DA 97-675, CC Docket No.96-98, Order (1997) ("Pennsylvania Order") (denying permanent waiver); New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(I), DA98-1434, NSD File No. L-98-03, Order (1998) ("New York Order") (denying permanent waiver but granting temporary waiver); *Matters of Local Competition Provisions of the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston, ordered by the Public Utility Commission of Texas, Administration of the North American Numbering Plan, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, FCC 96-333, Second Report and Order and Memorandum Opinion and Order at para. 287 (rel. Aug. 8, 1996) ("*Local Competition Second Report and Order*").

¹⁸ Petition at 8.

Connecticut at this time, it does not believe that 10 digit dialing “would be an issue.”¹⁹ Given the Commission’s strong policy in favor of 10 digit dialing and the CTDPU’s relatively neutral position, AWS requests that the Commission determine that for the CTDPU’s proposal, the CTDPU should implement 10 digit dialing in all area codes at the time that it implements the SO. The failure to include 10-digit dialing in the SO proposal may lead to the exact anti-competitive effects and dialing disparities that the Commission sought to avoid in recommending 10-digit dialing for SO proposals.²⁰ Mandatory 10 digit dialing would help to mitigate some of the inherently discriminatory impacts of the SO; would cause less confusion and complexity for callers in the state; and would be consistent with the Commission’s favored policies.

IV. ONLY ONE SERVICE OVERLAY CODE SHOULD BE IMPLEMENTED OVER THE 203 AND 860 AREA CODES

The Commission has also favored SOs that cover more than one area code, and found these to be superior from a numbering optimization perspective, because such a SO would reduce the demand for additional area codes and would lead to better utilization of numbering resources in the SO code.²¹ The CTDPU, however, favors two SO codes in the 203 and 860 area codes instead of just one overlay code for the two NPAs. Such a proposal is inefficient and would accelerate the exhaust of NPAs in the North American Numbering Plan (“NANP”). AWS urges the Commission to permit the CTDPU to implement only one SO for both area codes.

¹⁹ *Id.*

²⁰ See *Third NRO Order* at para. 92. 10 digit dialing ensures that all customers – whether in the underlying area code or in the overlay code – dial 10 digits to call parties in either the underlying or overlay code. Dialing disparity and anti-competitive effects occur when overlays are implemented absent mandatory 10-digit dialing because all existing telephone users in the old area code would only dial 7-digits to call others in the old area code while users in the new overlay code would have to dial 10 digits to reach customers in the old code. *Local Competition Second Report and Order* at para. 287.

²¹ *Third NRO Order* at para. 83.

One SO code should meet the forecasted demand for numbers in Connecticut, especially since Connecticut already has pooling in both area codes and wireless carriers will be pooling-capable in the very near future. Further, because Connecticut originally only had one area code, when the SO reverts to an all services overlay, the one SO should not create rating or routing problems or be confusing for customers. Limiting the number of area codes in the state to three, as opposed to four, might in fact result in less confusion and be administratively easier to implement.

V. THE COMMISSION SHOULD NOT DELEGATE CTDPUK AUTHORITY TO TAKE BACK NON-GEOGRAPHIC NUMBERS

Although the CTDPUK states that it “concurs” with the Commission’s prohibition on number take-backs, it appears that the CTDPUK may intend to take-back non-geographic numbers.²² In its petition, the CTDPUK stated that it will “work with the carriers to assign prospective and existing subscribers [telephone numbers] from the new SOs.”²³ The Petition, however, fails to discuss in any detail whether it will actually engage in such take-backs. The Commission cannot permit take-backs on this record.

The Commission has correctly recognized that take-backs impose serious negative effects on consumers and thus are generally disfavored.²⁴ Although the Commission did not completely prohibit take-backs, it has noted that states seeking to take back numbers must make a detailed and strong showing. Specifically, states must demonstrate that the negative effects of take-backs are mitigated by certain other benefits, and that: (1) consumers, particularly affected subscribers

²² Although AWS does not object in principle to the inclusion of non-geographic numbers in the SO, it is troubled by the Petition’s lack of detail regarding these types of numbers, particularly when this is an issue of first impression for the Commission. Thus, as a threshold matter, the CTDPUK must clearly define what it means or what types of services it intends to include as “non-geographic services.”

²³ Petition at 7 (emphasis added.)

²⁴ *Third NRO Order* at para. 90.

that would be required to relinquish their numbers, support such a measure; (2) the state will provide incentives for providers and current customers to relinquish numbers in the underlying area code; and (3) a phased-in approach will ease the cost burden on customers and service providers.²⁵ The CTDPUc has failed to even address these requirements, much less meet its burden of proof. The Commission simply cannot permit the CTDPUc to take back non-geographic numbers.

VI. CONCLUSION

Although the CTDPUc's Petition fails in many respects to comply with the procedural requirements of the Commission, AWS acknowledges that there is a numbering exhaust issue in Connecticut and that the CTDPUc has attempted to address this matter in an expeditious and reasonable matter. Moreover, given that the CTDPUc proposal is generally reasonable, and the need for area code relief is real, AWS supports granting of the Petition – with the modifications and exceptions discussed above.

²⁵ *Third NRO Order* at para. 90.

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